*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.7272 of 2004

% 03.11.2004

£ N. Tirupataiah, S/o. Pedda Vengaiah, Aged 32 years,

Resident of Narravada Village, Dattalur Mandal, Nellore District.

…Petitioner

Vs.

$ 1 The District Panchayat Officer, Nellore.
2 The Narravada Grampanchayat rep. by Executive Officer,
Naravada Village, Dattalur Mandal, Nellore District.
3 Malapati Guravaiah, Sarpanch, Naravada Grampanchayat,
Naravada Village, Dattalur Mandal, Nellore District.

… Respondents

!For the petitioner … MR. O. MANOHER REDDY

^For the Respondent Nos.1 and 2…GP FOR PANCHAYAT RAJ & RURAL

DEVELOPMENT

For the Respondent No.3 …MR. POSANI VENKATESWARLU

<Gist:

>Head Notes:

? Cases Referred

1 AIR 1987 SC 1023 (para 33) = (1987) 1 SCC 424

2 (2000) 6 SCC 127

3 (2000) 7 SCC 93

4 (2000) 4 SCC 406 = AIR 2000 SC 1535

5 (2001) 2 SCC 538

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.7272 of 2004

Between:

N. Tirupataiah, S/o. Pedda Vengaiah, Aged 32 years,
Resident of Narravada Village, Dattalur Mandal, Nellore District.

..... PETITIONER

AND

1 The District Panchayat Officer, Nellore.
2 The Narravada Grampanchayat rep. by Executive Officer, Naravada Village, Dattalur Mandal, Nellore District.
3 Malapati Guravaiah, Sarpanch, Naravada Grampanchayat, Naravada Village, Dattalur Mandal, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in Roc.No.3975/2003-A6 dated 15-3-2004 as illegal arbitrary and one without jurisdiction and consequently direct the 1st respondent to refer the matter to the District Court as envisaged under section 22 of the A.P. Panchayatraj Act.

Counsel for the Petitioner: MR. O. MANOHER REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3: MR. POSANI VENKATESWARLU

The Court made the following:

ORDER:

The petitioner is resident of Naravada village of Dattalur Mandal in Nellore District. He is also voter in the Voters list of Naravada Gram Panchayat. The third respondent was elected as sarpanch of the village. The petitioner herein gave a complaint to the second respondent alleging that the third respondent incurred disqualification for being elected or for being continued as sarpanch of the village. The petitioner alleged that the third respondent is having three children as on 29.8.2001, and therefore, incurs disqualification under Section 19 (3) of the A.P. Panchayat Raj Act, 1994 (the Act, for brevity).

The petitioner filed a writ petition being W.P.No.22939 of 2001 before this Court complaining inaction on the part of the second respondent. By an order dated 11.02.2002 this Court disposed of the writ petition with a direction to the second respondent to take action on the complaint/representation submitted by the petitioner in accordance with law. The petitioner also filed Contempt Case No.806 of 2002 against the second respondent. It is the case of the petitioner that the first

respondent herein forwarded the representation of the petitioner to the Panchayat Officer, Naravada to enquire into the matter and submit a report and that the Panchayat Officer submitted a report to the first respondent accordingly to the effect that the third respondent is having three children and that the third child was born on 22.12.1994 and not on 30.8.1997 as per the certificate issued by the Municipality. Based on the said report, the first respondent vide Memo. in ROC. No.3975/2003-A6 dated 15.3.2004 informed the petitioner that the third respondent does not attract disqualification under Section 19 (3) of the Act. Assailing the said Memo, the present writ petition is filed for a writ of Mandamus declaring the impugned memo as illegal, arbitrary and without jurisdiction. The petitioner seeks a consequential direction to the first respondent to refer the matter to the District Court as per provisions of Section 22 of the Act.

The writ petition was admitted on 19.4.2004. On 03.9.2004 this Court passed interim orders in W.P.M.P.No.9470 of 2004 suspending the impugned memorandum, as the respondents did not file counter affidavits in spite of service of notices. The third respondent immediately moved this Court by filing W.V.M.P.No.2923 of 2004 praying this Court to vacate the interim order. As a short question is involved and the arguments for the purpose of interlocutory applications as well as the main writ petition being the same, with the consent of the learned Counsel for respective parties, the matter was heard finally.

The third respondent in the counter affidavit asserts that he does not incur any disqualification before or after the election as sarpanch of Naravada Gram Panchayat on the ground that he is having more than two children. He further states that on the representation given by the petitioner, the first respondent directed the second respondent and Divisional Panchayat Officer (DPO), Kavali to enquire into the matter. The second respondent conducted enquiry and submitted a report on 07.8.2003 finding that he did not incur any disqualification and that the third child was born before the cut off date prescribed under the Act. Taking into consideration report submitted by the second respondent and the report of the DPO, Kavali dated 10.12.2003, the first respondent issued impugned order. All other allegations made by the petitioner are denied.

Learned Counsel for the petitioner Sri O. Manoher Reddy while placing reliance on Section 22 of the Act would submit that no power is conferred on the first respondent to decide the question whether or not a sarpanch is not qualified or has become disqualified under Section 19 (3) of the Act. According to the learned Counsel when a complaint is made alleging disqualification the executive authority has to give intimation to the sarpanch through the DPO and if such a member disputes the correctness of the allegation such a person has to apply to the District Court for a decision with regard to the allegation of disqualification. The DPO, it is urged, cannot himself decide the question. **Per Contra**, the learned Counsel for third respondent Sri Posani Venkateswarlu submits that under Section 22 of the Act where a complaint is given by the voter to the executive authority alleging disqualification of the sarpanch, the intimation has to be given to the sarpanch through the DPO and in such an event the DPO has to satisfy himself whether the allegation is validly made and only in such an event if the sarpanch or member

disputes the disqualification, remedy lies in District Court. According to the learned Counsel, the words “through the District Panchayat Officer” in Section 22 of the A.P. Grama Panchayats Act, 1964 were introduced by way of an amendment, to have a check at the stage of intimation by DPO with regard to improper allegations and the District Panchayat Officer is well within his powers to reject the complaint before taking further action under Section 22 of the Act.

The only point that arises for consideration is whether is it competent for DPO, the first respondent herein, to decide the question of disqualification when he is informed about the complaint given by a voter regarding such disqualification for being member or a sarpanch.

Section 22 of 1994 Act was amended by A.P. Act Section 22 of 2002 with effect from 20.6.2002 conferring power on the District Court (earlier it was Court of Junior Civil Judge) to decide the question of disqualification of a member or a sarpanch. After the amendment, the said provision reads as under:

Sec.22. Authority to decide questions of disqualifications of members:- (1) Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not disqualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, applied to the (District Court) having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a Gram Panchayat as a consequence of his ceasing to be a member of the Gram Panchayat under clause (b) of Section 20 and is restored later to his membership of the Gram Panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.

An analysis of above provision would show that i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified or has become disqualified under Sections 17 to 20 of the Act; ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) of the Act means the panchayat secretary appointed to each Gram Panchayat; iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member or sarpanch, who allegedly incurred the disqualification; iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, the member or any other member of the Gram Panchayat, or panchayat secretary or the Commissioner,

are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.

A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely, a) the member, who received the intimation; b) any other member; c) the panchayat secretary (executive authority) on a direction of the Gram Panchayat and d) the Commissioner of Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance of a "person" i.e. any resident of Panchayat, can it be said that the legislature purportedly intended to deny an opportunity to complainant to approach the District Court when none of the four categories of persons fails to initiate action before the Court? Strict interpretation of the text of the legislation compels one to answer the question in the affirmative but that would render the opportunity given to any person to complain about the disqualification incurred by a member or sarpanch, an empty formality if such a person is not given an opportunity to go to the Court and seek a decision as to whether the elected person against whom the complaint is made incurred disqualification or not. In a situation of this nature, the provision calls for purposive interpretation. The principle of purposive interpretation requires the Court to interpret legislative provision in such a manner, which ensures the proper exercise of a right by the person on whom such right is given and in consonance with the object with which a provision is enacted.

A reference may be made to **Reserve Bank of India v Peerless General Finance and Investment Company Limited**, **Joint Registrar of Cooperative Societies v T.A.Kuttappan**, **Associated Timber Industries v Central Bank of India**, **Allahabad Bank v Canara Bank** and **K.Duraiswamy v State of Tamil Nadu**.

I n **Statutory Interpretation** by Francis Bennion, the principle of purposive interpretation is described as under.

A purposive construction of enactment is one which gives effect to the legislative purpose by –

a. following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or

b. applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.

I n **Reserve Bank of India v Peerless General Finance and Investment Company Limited** (supra), the Supreme Court dealing with purposive interpretation having regard to the context laid down as under.

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the

statute must be read, first as a whole and then S. by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

As the very purpose of enacting Section 22 giving a right to the person to make an allegation in writing would be rendered otiose sub-section (1) of Section 22 has to be interpreted purposively in the context it appears. Therefore the words "such member or other member may… appearing in sub-section (1) of Section 22 must be held to include the person who made the complaint against member, who also has right to move the District Court for a decision."

When a person is given right to move to executive authority complaining disqualification and when such a person has a right to move the District Court for a decision, can it be said that the District Panchayat Officer, who is charged with a duty of sending intimation of disqualification can put an end even at the stage of intimating to the member allegedly disqualified? Notwithstanding the strenuous submissions made by the learned counsel for the third respondent, I am not able to agree with the submission. The executive authority is given a right to receive complaint and send it to the District Panchayat Officer, who is given a right to intimate to the concerned member. Both of them are not conferred with any power to determine the truth or validity of the complainant. If such was the intention, the provision would have been certainly drafted in a different manner and not the way it finds place in the statute book. The submission of the learned counsel for the petitioner that the words "through the District Panchayat Officer" in Section 22 of A.P. Gram Panchayats Act, 1964 (1964 Act, for brevity) were introduced by way of amendment to enable the District Panchayat Officer to conduct preliminary scrutiny and reject false and frivolous complaints, is a submission to be stated for the purpose of rejection. This Court fails to understand as to how the insertion of the words "through the District Panchayat Officer" in 1964 Act is relevant for the purpose of Section 22, when 1964 Act has been repealed by reason of Section 276 of A.P.Panchayat Raj Act, 1994. No material is placed before this Court in support of the submission made by the learned counsel for the third respondent. Be that as it is, a careful scrutiny of sub-section 22(1) would show that a person can make a complaint in writing against a member or a sarpanch. Generally, the executive authority whether it is panchayat secretary or somebody, is subordinate to the Gram Panchayat. Therefore, there may be a possibility that a member or sarpanch against whom disqualification is alleged may refuse to receive the notice and therefore the legislature thought it fit to send such intimation through the District Panchayat Officer, who is second appellate authority under Section 128(2) of the Act as well as an authority who exercise vast powers under the Act. The introduction of the words "through District Panchayat Officer", 1964 Act was not intended to confer any quasi judicial power on the District Panchayat Officer to determine *inter se* rights.

The submission of the learned counsel for third respondent cannot be accepted for yet another reason. After coming into force of the Constitution (Seventy-third Amendment) Act, 1992, the local bodies like panchayats and municipalities have been made subject matter of the supreme law of the country. As per Article 243N of the Constitution of India, any law relating to panchayats, which is inconsistent with the provisions of Part IX of the Constitution of India shall have no enforceability and indeed Panchayat Raj Act, 1994 is a legislation repealing 1964 Act keeping in view the provisions of Articles 243 to 243-O of the Constitution of India. What does Constitution say in this regard? Article 243F of the Constitution of India deals with disqualifications for membership of panchayats, which reads as under.

243F. Disqualifications for membership:- (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

a. if he is disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

b. if he is so disqualified by or under any law made by the Legislature of the State

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

In the result, the writ petition is allowed and liberty is given to petitioner to move the District Court for a decision on the question of disqualification of the third respondent. As and when such application is moved under Section 22(1) of the Act, the District Court having jurisdiction shall entertain the same and pass appropriate orders after notice to third respondent. There shall be no order as to costs.

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(V.V.S.RAO,J)

03.11.2004.

pln/ys

Note: LR copy be marked.

(By order)

pln/ys

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the third day of November, two thousand and four only.

To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1 The District Panchayat Officer, Nellore.
2 The Narravada Grampanchayat rep. by Executive Officer,
Naravada Village, Dattalur Mandal, Nellore District.
3 Two CCs to the Government Pleader for Panchayat Raj &

Rural Development, High Court Buildings, Hyderabad (O.U.T)

4. 8 LR copies.

5. Under Secretary, Union of India, Ministry of Law, Justice and Company

Affairs, New Delhi.

6. The Secretary, A.P.Advocates Association Library, High Court Buildings,

Hyderabad.

7. Two C.D. Copies.

8. The District Judge, Nellore.